Insurance and Coordinated Transportation[1]

Often in transportation coordination projects, the question "Will coordinating transportation services affect my insurance coverage?" is asked. The problem is most agencies cannot answer that question. And, even after asking their insurance carrier, they still can't. Although coordinated transportation has existed in some form or another for decades, despite the best planning, insurance and liability issues can rise up as a potential barrier to otherwise successful coordinated transportation systems.

Successfully laying the groundwork for your coordination effort means involving your broker and the insurance company's underwriter early in the process. Talk with them about what you are trying to do and show them that it is the same level of activity or type of activity as before. Demonstrate that the coordinated service will be managed, supervised, scheduled and dispatch (including vehicle passenger tracking), maintained, and generally operated with the same safety and performance standards as the stand-alone service of the insured party. If your insurance company indicates that it may have concerns over your proposed activities, have a detailed discussion with them about what is and isn't prohibited by the insurance polices of those involved in the coordination effort.

The following paragraphs provide information to help you address some of the potential questions an insurer may raise with regard to transportation coordination.

JOINT USE OF VEHICLES

Joint use, the most common form of coordination, is where two or more agencies jointly use a vehicle. The vehicle may be operated by one or both agencies, with paid and/or unpaid (volunteer) drivers. The agency owning the vehicle should be designated as the lead agency and should develop, in consultation with the additional coordinating agency(ies), the policies and procedures that will govern the coordination activities. Alternatively, one agency can lease its vehicles over to the other, with the lead agency maintaining the insurance for the vehicle. In either case, each agency involved should name the other agency(ies) as an additional insured party on their individual policies.

[1] Adapted from "Insurance and Liability Issues–Coordination Mountains or Hurdles?" Transportation Coordination Brief No. 14. Ohio Statewide Transportation Coordination Task Force, April 1999. With updates by Walter Diangson, Pacific Shore Insurance Services, Inc., March 2009.

It is extremely important not to underestimate the coverage limits of liability. Accidents can and do happen. Review all policies to see that the coverages and limits are the same or compatible. Also review the dates of the policies for gaps.

In coordination projects where vehicles are shared, the accident will affect not only the party operating the vehicle, but also the agency owning the vehicle. This should not stop you from coordinating and sharing vehicles, but merely make you more aware of the potential risk so that your liability coverage is high enough to cover this potential risk. This is just part of prudent risk management that all organizations should practice. In the case of an accident, the insurance of the owner of the vehicle will pay the claim first, then seek reimbursement from the insurer of the vehicle's operator (this is called "subrogation").

Types of Insurance Coverage

Commercial Automobile Insurance. This is the general category covering sedans, vans, and small buses. Specific areas of coverage that should be addressed in the insurance policy include the following:

- Liability
- Uninsured/under-insured motorists
- Additional insureds to include all participating agencies
- Physical damage coverage of the vehicles
- Comprehensive and collision deductibles. It is important to specify which agency, the owner or the operator, will be responsible for paying the out-of-pocket deductible.
- Medical payments. Coverage Under this coverage, the medical treatment costs of a person injured in an accident can be paid automatically by the insurance carrier without the injured person having to file a suit. Coverage amounts are usually $1,000- $5,000.
- Non-owned Contingency liability

Workers' Compensation Insurance. You will want to ensure that coverage is in place for all employees of the participating agencies. Check on your state's regulations regarding workers' compensation insurance.

General Liability Insurance. General liability coverage should include liability assumed by written contract or agreement. Note that policies for automobile liability and general liability can be secured from separate companies. It is generally easier to handle claims if both the automobile and general liability are with the same company. However, some of the carriers insuring public and community transportation do not provide both.

If a transportation provider does have two different companies—one for automobile liability and one for general liability—it is important to define where one type of liability coverage stops and one begins. For example, if an agency provides door-to-door transportation services for customers, where does the automobile-associated coverage end and the general liability coverage begin (sometimes referred to as the "transition zone"). Again, be up front and clear with your insurers about how you will operate your business and how the choices you make in providing service may affect your coverage. Also, be sure your policies and procedures about handling of passengers is crystal clear, from the time you arrive at the customer's origin to his or her destination, including how you will transition them onto the vehicle and to a "reasonable" distance or point of independence off of the vehicle, whether that is safely away from the bus on the sidewalk, to the door of their destination, or onto their or someone else's property.

Excess Liability Insurance. Excess Liability Insurance provides coverage over and above primary or standard insurance. The coverage is triggered when the amount of a loss exceeds (or exhausts) an existing primary policy limit. Excess liability coverage follows the same terms and conditions of the underlying policy or primary policy. For instance, if an agency has an auto liability policy and a general liability policy of $1,000,000 limits each, but is required to carry $3,000,000 limits by a grantor in each type, the agency can obtain additional excess policies on both for an additional $2,000,000 for a total $3,000,000 for each primary policy.

Umbrella Insurance. Umbrella coverage provides excess coverage over several primary policies, such as general liability, auto liability, employment practices liability and homeowners insurance. An umbrella policy increases the amount of liability insurance (limits) of the basic policies carried by the agency and reaches out to cover areas of unknown exposures lacking in the basic insurance policy.
The term "umbrella" is used because it covers liability claims from all policies underneath it, such as auto liability, general liability or other liability policies. Umbrella insurance provides broad insurance beyond and atop the primary coverage limits.

Employment Practices Liability. Agencies should also consider providing employment practices liability insurance (EPLI). EPLI is coverage protecting an employer against claims, which are not covered under workers' compensation statutes, alleging employer negligence stemming from work-related injuries, illness or death, as well as sexual harassment, wrongful termination and employment discrimination.

Directors and Officers Liability. All agencies should cover board and officers (staff) with Directors and Officers Liability (D&O). D&O insurance provides coverage against wrongful acts which might include actual or alleged errors, omissions, misleading statements, and neglect or breach of duty on the part of the board of directors and other insured persons and entities. Many D&O policies include employment practices liability coverage.

Insurance Provision among the Coordinating Agencies -Additional Insured Endorsements. An important part of insurance for the coordinated program will be naming other agencies involved as insureds on each others individual insurance policies. This is known as an additional insured endorsement to the policy. An additional insured endorsement is a contractual provision of the policy by which an additional insured (a person or entity, other than the named insured) is protected by the particular insurance policy.

Other Important Insurance Considerations among the Coordinating Agencies. Coordinating agencies should also consider if the differences in each other's insurance coverage are acceptable in terms of the following:

- Whether or not the limits by individual insurance policies of the agencies are equal to or otherwise acceptable to the other agencies involved in the coordination program.
- Whether or not insurance companies of the participating agencies are admitted in the state where they are providing the coverage. An admitted insurance company is a company that is licensed by a particular state, monitored by the state for financial stability, covered by the state's guaranty fund, and subject to the state's regulations for licensed insurance companies.
- Whether or not the companies providing insurance are equally rated or otherwise acceptable to others in terms of their individual A.M. Best insurance credit ratings. A.M. Best Company is an independent company that rates insurance companies on their financial stability and future claims-paying ability (see www.ambest.com).
- Agencies should also consider the dates of the insurance policies of each of the participating agencies; so as to be aware of renewal and gaps in coverage should they occur.

Hiring, Training, and Supervising Driver

Hiring, training, and supervisory standards should be compatible among all agencies participating in vehicle sharing.

Objective driver selection criteria is critical to a good risk management program and should be established and agreed to among all of the agencies participating in the coordination project. Once the criteria have been established and accepted, the participating agencies must then agree that all of the drivers meet the standard at inception, and that a regular and ongoing program to maintain driver eligibility is put into place.

The lead agency may wish to oversee establishment and monitoring of the driver selection criteria, or delegate the responsibility to one of the participating agencies. Whichever you choose, it is better to have a single entity responsible for the maintenance of this effort.

Agencies should incorporate the management of driver and staff behaviors as an important element in safety training, including driver attitude and commitment to a team concept. Unsafe behavior rather than unsafe conditions (e.g., icy or snowy conditions, traffic, road construction, parked cars, low overhanging tree braches) leads to more accidents. Those unsafe behaviors include rushing, poor planning, and distractions (e.g., driver use of cell phones, driver inattention because of day dreaming or sightseeing, driver's extended involvement with passengers in conversation, passengers taking off their seatbelts and standing).

Rider Conduct Standards

Just as important as driver policies are the policies set for passengers. All agency partners should establish a common set of passenger codes of conduct and ensure that all coordinating agencies, whether providing transportation or riders, have compatible rider policies.

Driver Licensing

Agencies may also wish to adopt their state's commercial drivers license (CDL) provisions for all vehicles. Most states require a CDL driver license for any vehicle designed to transport 16 or more passengers, including the driver; the requirement for vehicle operators to have a valid CDL is generally based upon the vehicle manufacturer's seating and weight classifications, not the functional seating capacity of the vehicle.

However, it is advisable for a transportation provider to adopt these provisions for all vehicles. Doing so, for example, would require drivers to report to their employer within 24 hours any moving violation.

Accident and Reporting Procedures

Partner agencies should have compatible accident and incident reporting procedures, including joint accident review and safety committees. Steps they can take include

- Establishing a mutual protocol for reporting accidents and incidents, follow-up action, safety meetings, and accident reviews
- Using a common accident reporting form (acceptable to your insurance claims department)
- Using disposable cameras on each vehicle if possible or at least have digital cameras with the road supervisors
- Sharing road supervision duties or shifts, with common policies and procedures]
- Having common road call services or common emergency response maintenance service
- Adopting a procedure that vehicles must be serviced off the roadway or highway, have vehicles pull off highway, freeway to side streets for safer work areas.

Other considerations for agencies sharing vehicles

All agencies involved in sharing a vehicle should contribute toward the cost related to operating the vehicle. These costs will include, but may not be limited to, expenses related to administration, setting driver standards, driver training, and of course, insurance. Once decisions are made regarding cost sharing, they should be documented in a formal contract that outlines all of the rights and responsibilities for each agency participating in the coordination effort.

Agencies should also have compatible or comparable management and operations policies and procedures.

USING SCHOOL BUSES IN COORDINATED TRANSPORTATION

School bus transportation has a very specific and limited scope of service. Buses are used only 184 days a year and in limited hours during those days. Bus drivers are more regulated and tested (on average) than are drivers of public transit or human service agencies that provide transportation. The average number of miles operated each year is low and the average speed at which they travel is low. Therefore, the exposure and risk for these vehicles is limited. Insurance companies are comfortable with covering these types of services, and many insurers may be licensed to write only these policies in a state. A school system's insurance carrier, therefore, may not wish to, or may not be licensed to, write an insurance policy for school buses in a coordination effort.

If you choose to use school buses in a coordinated effort (and you are permitted to do so under state law), you should

- Choose a dollar amount of insurance you wish to insure the fleet for
- Decide how to cover the cost (share among agencies, etc.)

- Choose the agency which will provide the insurance coverage (school system, lead agency in coordination effort, etc.)
- Be sure all costs of the school buses, including depreciation, are be covered by the coordination project

If a school system wishes to participate in a coordination project under the instances outlined in the above paragraph, vehicle insurance can be addressed in one of two ways.

First, a school system can lease its vehicles to the coordination project without insurance. The lease agreement would specifically require the coordinating agency to supply the insurance coverage, and it would also set forth the coverage requirements and amounts. If this option is used, the legal counsel for both the school system and coordination project should review and approve the agreement prior to the actual lease. Other standard provisions that would be included in any lease arrangement (e.g., drivers, fuel, maintenance) would also be addressed.

The second option is to include an endorsement in the school system's insurance policy which specifically addresses the use of the vehicles in the coordination project.

MIXING CLIENT POPULATIONS

Typically in any coordinated transportation system, many client populations will be served at the same time. This should not be a problem for human service agencies as the population each serves has a scope similar to the other agencies in the coordination effort. However, insurance carriers have at times hesitated to cover agencies that are serving "mixed" client populations because of what they perceive as increased risk.

It is important to understand that the risks are different for different client populations. For example, transporting school children is different from transporting the senior population.

You can respond to any concerns about increased risk by letting your insurer know that you have compatible or uniform driver hiring, screening, and training standards in place across all participating agencies. This way, all agencies in your coordination effort can be assured that their particular customers will receive safe and reliable service regardless of who provides the service. Many coordination projects address the issue of client mixing by working to educate member agencies about not only the differences, but the similarities of their particular client populations. Remember, public transportation providers have been mixing clients successfully for years.

LEARNING TO "TALK THE TALK" OR SELLING YOUR TRANSIT SYSTEM TO YOUR INSURANCE CARRIER

Even after you have put all of the necessary joint operational, insurance, cost-sharing, and hiring and training agreements in place among partner agencies, your efforts to secure insurance coverage for a coordinated project will be hampered unless you are able to effectively communicate all of the risk management steps you have taken to your insurance carrier.

Learn the Correct Insurance Terms

Describing your transportation system incorrectly can mean the difference between coverage and being dropped. Insurance companies are driven by risk. The amount of your insurance premium is directly proportional to the amount of risk your carrier foresees in providing you coverage. The higher the risk, the higher the premium.

Livery, taxi service, community transportation, and school bus transportation all have specific meanings to insurance carriers. Find out what they are. For example, the term "public livery" may be broader than you think; it includes taxi, limousine, charter bus, other bus (public transit, shuttles) and paratransit (non-emergency medical transportation) to the insurance industry. An insured needs to be clear as to what type of public livery they provide. (Note: some basic insurance definitions are included at the end of this brief.)

Educate Your Current Insurance Carrier

Just as you may not speak "insurance-ese," your carrier may not speak in terms commonly used with regard to coordinated transportation. Explain your project, the agencies involved, and your operating plan. This latter element is essential. Showing that you have standards for driver training, selection and retention as well as service provision that all coordination participants follow may mean the difference between coverage at a reasonable premium and coverage at an exorbitant amount or no coverage at all.

The more information you can provide to your carrier the better.

Criminal background checks and pre-employment drug and alcohol testing are common requirements among transportation systems and go a long way to show insurance carriers that you are doing your part to ensure that you are hiring quality drivers.

If you had the foresight to develop a risk management plan, or one of your participants has one that you can adopt for the coordination effort, be sure to provide this as well. Make your insurance carrier a partner in your coordinated effort, not an adversary.

If Your Carrier Can't (Or Won't) Provide Insurance Coverage For You, Find One That Will

Coordinating transportation services makes sense from community partner and "good neighbor," cost-effectiveness, and efficiency points of view. Don't give up just because the first carrier says no. Insurance companies can pick and choose what they cover. They may also not be filed in your state to be able to write the policy you need. Be prepared to shop around. If your carrier cannot offer you the coverage you need, find one that will.

COMMON VEHICLE INSURANCE TERMS

The following definitions will help you to read and understand the information in this brief and to communicate with your insurance carrier.

Liability: The portion of a policy that pays for bodily injury or damage that your vehicle does to others as the result of an accident. This is the most important part of any vehicle insurance policy. Example: Your vehicle hits a legally parked car with two people in it. There is substantial damage to the car and both people suffer neck injuries. This would be covered under your liability coverage.

Medical Payments: Limited payments (generally $1,000 to $5,000) for medical treatment made to persons injured either on or by your vehicle. These payments are made regardless of fault to deter people from filing a liability claim. Example: Mrs. Jones trips over her loose shoe lace and falls on your bus. She then has a doctor's visit to bandage a bruised knee.

Uninsured Motorists: Provides coverage to you and your passengers should an uninsured motorist be at fault in an accident. Your insurance company pays on behalf of the uninsured driver. This also applies in hit and run situations. Example: Another driver rear ends your vehicle causing damage and injury to two passengers, then leaves the scene without stopping. He leaves so quickly that you cannot get his license number.

Collision: Coverage which pays for damage to your vehicle as the result of a crash with another vehicle or fixed object. Example: Your driver hits a tree causing $2,500 in damage to your vehicle.

Comprehensive: Comprehensive coverage provides payments to repair or replace your vehicle as a result of virtually all other causes, (except collision), such as fire, theft, flood, or vandalism. Example: Several of your vehicles are spray painted by a graffiti artist requiring repainting at a cost of $1,000.